

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRIAN ALLEN ETCHISON,

Petitioner,

Case No. 1:08-cv-1024

v

HON. JANET T. NEFF

SHIRLEE A. HARRY,

Respondent.

OPINION

This is a habeas corpus petition filed pursuant to 28 U.S.C. § 2254. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation, recommending that this Court deny the petition as barred by the one-year statute of limitations. The matter is presently before the Court on Petitioner's objection to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which an objection has been made. The Court denies the objection and issues this Opinion and Final Order pursuant to FED. R. CIV. P. 58.

Petitioner argues that the Magistrate Judge erred in finding his claim barred by the statute of limitations because, Petitioner argues, the limitations period found in 28 U.S.C. § 2244(d)(1) does not apply to prisoners convicted before the enactment of the Antiterrorism and Effective Death Penalty Act, PUB. L. NO. 104-132, 110 STAT. 1214 (AEDPA).

Petitioner's argument is without merit. The Magistrate Judge properly applied the law. The Sixth Circuit has held that a petitioner whose conviction became final prior to the effective date of the AEDPA has one year from the effective date, or until April 24, 1997, within which to file a petition for writ of habeas corpus. *Payton v. Brigano*, 256 F.3d 405, 407 (6th Cir. 2001) (cases cited therein).

Having so determined, the Court must further determine pursuant to 28 U.S.C. § 2253(c) whether to grant a certificate of appealability (COA) as to the issue raised. *See Slack v. McDaniel*, 529 U.S. 473 (2000); *Murphy v. Ohio*, 263 F.3d 466, 466-67 (6th Cir. 2001).

"When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. . . . Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further." *Slack*, 529 U.S. at 484. Upon review, this Court finds that reasonable jurists would not find the Court's procedural ruling debatable. A certificate of appealability will therefore be denied.

A Final Order will be entered consistent with this Opinion.

Date: February 19, 2009

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge

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FINAL ORDER

In accordance with the Opinion entered this date:

IT IS HEREBY ORDERED that the objection (Dkt 13) is DENIED and the Report and Recommendation of the Magistrate Judge (Dkt 10) is APPROVED and ADOPTED as the opinion of the Court.

IT IS FURTHER ORDERED that the petition for habeas corpus relief (Dkt 1) is DENIED for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that a certificate of appealability pursuant to 28 U.S.C. § 2253(c) is DENIED .

Date: February 19, 2009

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge